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OFFICE OF PETITIONS

**POTOMAC PATENT GROUP PLLC
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FREDERICKSBURG VA 22404**

In re Application of	:	
Anthony Spencer	:	
Application No. 10/534,343	:	ON PETITION
Filed: July 18, 2005	:	
Attorney Docket No. 0120-032	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 10, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the final Office action mailed, March 19, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 20, 2009. A Notice of Abandonment was mailed on November 25, 2009. A reply was received on July 20, 2009. This reply was not a proper response. An appeal brief was filed on November 16, 2009, but was not proper because a Notice of Appeal was not filed prior to the filing of the appeal brief.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal, with the required fee of \$270 and Appeal Brief, with the required fee of \$270, (2) the petition fee of \$810, and (3) a proper statement of unintentional delay. Accordingly, the Notice of Appeal and Appeal Brief are accepted as being unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$490 extension of time fee submitted with the petition on December 10, 2009 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to the Technology Center AU 2474 for appropriate action in the normal course of business for processing of the Notice of Appeal and Appeal Brief received December 10, 2009.

/Kimberly Inabinet/

Kimberly Inabinet
Petitions Examiner
Office of Petitions